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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/013,043
Filing Date: October 30, 2001
Appellant(s): BERGER ET AL.

Jody C. Bishop
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 04/05/2007 appealing from the Office action

mailed on 11/30/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings

which will directly affect or be directly affected by or have a bearing on the Board's decision in

the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in

the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6687745	Franco et al.	2-2004
6289462	McNabb et al.	9-2001
6550061	Bearden et al.	4-2003
6795963	Andersen et a.	9-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 6-7, 9-19 and 21-24 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Franco et al., US Patent No. 6,687,745 (hereinafter Franco) in view of

McNabb et al. (U.S. 6,289,462) (hereinafter McNabb).

As Per Claim 1, Franco teaches "enabling selection of an application from one or more

applications (e.g. see col. 4:18-24, which states "… selectively retrieving and presenting

remotely stored applications …")"; "enabling dragging of a graphical representation of said

selected application towards a graphical representation of the recipient computer (e.g. see col.

19:64 to col. 20:14, dragged and dropped); "enabling dropping of said graphical representation

of said application on said graphical representation of said recipient computer (e.g. see col. 19:64

to col. 20:14, droplet–enabled)"; and "automatically installing said selected application in said

recipient computer in response to said dropping of said graphical representation of said selected

application (e.g. see col. 19:64 to col. 20:14, which states "… attachment is copied onto …")".

Franco does not explicitly teach a compartment of said trusted operating system.

McNabb teaches a compartment of said trusted operating system (e.g. see "partition" in column 17, lines 49-57).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Franco to include a compartment of said trusted operating system using the teaching of McNabb. The modification would be obvious because one of ordinary skill in the art would be motivated to provide the level of assurance needed to support critical network and transaction servers (McNabb, column 17, lines 49-52).

As Per claim 2, the rejection of claim 1 is incorporated and further Franco teaches: "automatically determining one or more supporting resources (e.g. see col. 20:9-14, droplet-enabled survey application and/or information) associated with said selected application"; "automatically retrieving said supporting resources (e.g. see col. 20:14, retrieved)"; and "automatically installing said supporting resources within said recipient computer (e.g. see col. 19:64 to col. 20:14)"; and McNabb teaches said compartment (e.g. see "partition" in column 17, lines 49-57).

As Per claim 3, the rejection of claim 1 is incorporated and further Franco teaches: "automatically determining access controls for one or more files associated with said selected application (e.g. see col. 16:53-66, which states "The file generated during the downloading operation is accessed to support the representation operation ...")"; and "automatically setting

said determined access controls for said one or more files (e.g. see col. 16:53-66, which states

"...the details/content of the file are determined by the parameters that embedded the

downloadable item (link) into the informational content 36 delivered to the client computer 20

...")".

As Per claim 6, the rejection of claim 2 is incorporated and further Franco teaches

"automatically selecting one or more library files (e.g. see col. 18:23-28)".

As Per claim 7, the rejection of claim 2 is incorporated and further Franco teaches

"automatically selecting one or more configuration files (e.g. see FIG. 1, file 74 and associated

text, and col. 4:46-47, network configured computer processing system)".

As Per claim 9, the rejection of claim 3 is incorporated and further Franco teaches

"automatically determining access controls for at least one of said files based at least in part on

the type of the file (e.g. see col. 20:3)".

As Per claim 10, the rejection of claim 3 is incorporated and further Franco teaches

"automatically determining access controls for at least one of said files based at least in part on

the location of the file (e.g. see FIG. 1, link 72 and associated text)".

As Per claim 11, the rejection of claim 1 is incorporated and further Franco teaches

"enabling dropping of said graphical representation of said application in close proximity to said

graphical representation of said recipient computer (e.g. see col. 19:64 to col. 20:14)"; and

McNabb teaches said compartment (e.g. see "partition" in column 17, lines 49-57).

As Per claim 12, this claim is rejected under the same reason set forth in connection of

the rejection of claim 1; and Franco further teaches "displaying a graphical representation of a

plurality of recipient computers" (e.g. see col. 19:64 to col. 20:14); and McNabb further teaches

plurality of compartments of said trusted operating system (e.g. see "partition" in column 17,

lines 49-57).

As per Claims 13-14, the rejection of claim 12 are incorporated and are rejected under the

same reason set forth in connection of the rejection of claims 2-3 respectfully.

As Per claim 15, the rejection of claim 14 is incorporated and further McNabb teaches

assigning a compartment label unique to said compartment to each of said supporting resources

(column 17, lines 49-57).

As per Claim 16, the rejection of claim 12 is incorporated and is rejected under the same

reason set forth in connection of the rejection of claim 11.

As Per claim 17, this claim is rejected under the same reason set forth in connection of

the rejection of claim 12; and Franco further teaches "a graphical user interface, comprising: a

display portion displaying at least one recipient computer" (e.g. see col. 19:64 to col. 20:14); and

McNabb further teaches compartment of said trusted operating system (e.g. see "partition" in column 17, lines 49-57).

As per Claims 18-19, the rejection of claim 17 are incorporated and are rejected under the same reason set forth in connection of the rejection of claims 16 and 14 respectfully.

As per Claim 21, the rejection of claim 19 is incorporated and is rejected under the same reason set forth in connection of the rejection of claims 9-10.

As Per claims 22-23, these claims are rejected under the same reason set forth in connection of the rejection of claim 1.

As Per claim 24, the rejection of claim 23 is incorporated and further Franco teaches "enabling dropping of said graphical representation of said selected application in close proximity to said graphical representation of said selected compartment (e.g. see col. 19:64 to col. 20:14, droplet–enabled)".

Claims 4-5, 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franco in view of McNabb, and further in view of Bearden et al. US Patent No. 6,550,061 (hereinafter Bearden).

As Per claim 4, the rejection of claim 3 is incorporated and further the combination of Franco and McNabb does not explicitly teach displaying file access control. However, Bearden in an analogous art teaches in a manner such as "displaying said access controls along with the files with which said access controls are associated". (E.g. see FIGURE 6. and associated text, i.e. see col. 5:19-42). Therefore, it would have been obvious to incorporate the teaching of Bearden into the teaching of the combination of Franco and McNabb to display file access control. The modification would have been obvious because one of ordinary skill in the art would have been motivated for a user to delete registry keys by adding a user with administrators privileges.

As Per claim 5, the rejection of claim 3 is incorporated and further the combination of Franco and McNabb does not explicitly disclose modifying access controls in response to a user input. However, Bearden in an analogous art teaches in a manner such as "modifying said access controls in response to a user input". (E.g. see FIGURE 6. and associated text, i.e. see col. 5:19-42). Therefore, it would have been obvious to incorporate the teaching of Bearden into the teaching of the combination of Franco and McNabb to modify access controls in response to a user input. The modification would have been obvious because one of ordinary skill in the art would have been motivated for a user to delete registry keys by adding a user with administrators privileges.

As per Claim 20, the rejection of claim 19 is incorporated and is rejected under the same reason set forth in connection of the rejection of claim 4.

As Per claim 25, the rejection of claim 23 is incorporated and further Franco teaches "automatically determining access controls for one or more files associated with said selected application (e.g. see col. 16:53-66, which states "The file generated during the downloading operation is accessed to support the representation operation ...")"; and "automatically setting said determined access controls for said one or more files (e.g. see col. 16:53-66, which states "...the details/content of the file are determined by the parameters that embedded the downloadable item (link) into the informational content 36 delivered to the client computer 20 ...")".

The combination of Franco and McNabb does not explicitly disclose displaying file access control. However, Bearden in an analogous art teaches in a manner such as "displaying said access controls along with the files with which said access controls are associated". (E.g. see FIGURE 6. and associated text, i.e. see col. 5:19-42). Therefore, it would have been obvious to incorporate the teaching of Bearden into the teaching of the combination of Franco and McNabb to display file access control. The modification would have been obvious because one of ordinary skill in the art would have been motivated for a user to delete registry keys by adding a user with administrators privileges.

The combination of Franco and McNabb does not explicitly teach modifying access controls in response to a user input. However, Bearden in an analogous art teaches in a manner such as "modifying said access controls in response to a user input". (E.g. see FIGURE 6. and associated text, i.e. see col. 5:19-42). Therefore, it would have been obvious to incorporate the teaching of Bearden into the teaching of the combination of Franco and McNabb to modify

access controls in response to a user input. The modification would have been obvious because

one of ordinary skill in the art would have been motivated for a user to delete registry keys by

adding a user with administrators privileges.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franco in view of

McNabb, and further in view of Andersen et al. US Patent No. 6,795,963 (hereinafter Andersen).

As Per claim 8, the rejection of claim 2 is incorporated and further the combination of

Franco and McNabb does not explicitly teach querying an executable file. However, Andersen

in an analogous art teaches in a manner such as "querying an executable file (E.g. see col. 11:21-

25)". Therefore, it would have been obvious to incorporate the teaching of Andersen into the

teaching of the combination of Franco and McNabb to query an executable file. The

modification would have been obvious because one of ordinary skill in the art would have been

motivated for a debugger to enhance analysis of core files in an interactive debugging

environment.

(10) Response to Argument

Appellant has argued

1)   The rejection of claims 1-3, 6-7, 9-19, and 21-24 should be overturned because there is

insufficient motivation to combine the system for delivering a graphical user interface described

in Franco with the compartmentalized operational system of McNabb.

Examiner's Response

1)   It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Franco to include a compartment of said trusted operating system using the teaching of McNabb. The modification would be obvious because one of ordinary skill in the art would be motivated to provide the level of assurance needed to support critical network and transaction servers (McNabb, column 17, lines 49-52). That is, one would be motivated to provide the level of assurance needed for *critical elements of a trusted operating system.*

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the appellant's disclosure, such a reconstruction is proper. See *In re McLaughlin,* 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to appellant's argument that the compartments of McNabb can not be installed onto Franco's client computer, content provider, and/or application server, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller,* 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Appellant has argued

2)   The combination of Franco and McNabb fails to teach or suggest a graphical

representation of a compartment of such a trusted operating system, dragging and dropping an

application on a graphical representation of a compartment, and automatically installing the

application in the selected compartment in response to such dropping.

Examiner's Response

2)   Franco teaches "enabling selection of an application from one or more applications (e.g.

see col. 4:18-24, which states "... selectively retrieving and presenting remotely stored

applications ...")"; "enabling dragging of a graphical representation of said selected application

towards *a graphical representation of the recipient computer* (e.g. see col. 19:64 to col. 20:14,

dragged and dropped); "enabling dropping of said graphical representation of said application on

said graphical representation of said recipient computer (e.g. see col. 19:64 to col. 20:14,

droplet–enabled)"; and "automatically installing said selected application in *said recipient*

computer in response to said dropping of said graphical representation of said selected

application (e.g. see col. 19:64 to col. 20:14, which states "... attachment is copied onto ...")".

That is, Franco teaches a graphical representation of the recipient computer. Franco does

not explicitly teach *a compartment of said trusted operating system*. McNabb teaches a

compartment of said trusted operating system (e.g. see "partition" in column 17, lines 49-57).

In response to appellant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Appellant has argued

3)   Dependent claim 2 depends from independent claim 1, and thus includes all of the elements of claim 1 in addition to its own supplied elements. It is respectfully submitted that dependent claim 2 is allowable at least because of its dependence from claim 1 for the reasons discussed above. Moreover, the combination of Franco and McNabb fails to teach or suggest elements of claim 2. Neither Franco nor McNabb teaches or suggests automatically installing supporting resources associated with a selected application within a selected compartment.

Examiner's Response

3)   The Examiner has already addressed appellant's arguments regarding claim 1 in the Examiner's Responses (1) and (2) above. See the Examiner's Responses (1) and (2) above.

Furthermore, regarding elements of claim 2, appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Appellant has argued

4)   The combination of Franco and McNabb fails to teach or suggest all of the elements of claim 12. For instance, as discussed above with claim 1, the applied combination fails to teach

or suggest a graphical representation of a plurality compartments of a trusted operating system.

Neither Franco nor McNabb teaches or suggests dragging and dropping an application on a

graphical representation of a compartment and automatically installing the application in the

selected compartment in response to such dropping, as discussed above with claim 1. Therefore,

the combination of Franco with McNabb, even if proper, does not teach or suggest every element

recited in claim 12.

Examiner's Response

4)   The Examiner has already addressed appellant's arguments regarding claim 1 in the

Examiner's Responses (1) and (2) above. See the Examiner's Responses (1) and (2) above.

Appellant has argued

5)   Dependent claim 13 depends from independent claim 12, and thus includes all of the

elements of claim 12 in addition to its own supplied elements. It is respectfully submitted that

dependent claim 13 is allowable at least because of its dependence from claim 12 for the reasons

discussed above. Moreover, dependent claim 13 recites additional elements not taught or

suggested by the applied art. Neither Franco nor McNabb teaches or suggests automatically

installing supporting resources associated with a selected application within a selected

compartment.

Examiner's Response

5)   The Examiner has already addressed appellant's arguments regarding claim 12 in the

Examiner's Response (4) above. See the Examiner's Response (4) above.

Furthermore, regarding elements of claim 13, appellant's arguments fail to comply with

37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable

invention without specifically pointing out how the language of the claims patentably

distinguishes them from the references.

Appellant has argued

6)   The combination of Franco and McNabb fails to teach or suggest elements of claim 17.

For instance, neither Franco nor McNabb is concerned with installing an application in a

compartment of a trusted operating system, and neither reference provides any teaching or

suggestion of a graphical installation tool for so installing an application. Further, as discussed

above with claim 1, the applied combination fails to teach or suggest a graphical user interface

comprising a display portion displaying at least one compartment of a trusted operating system.

Neither Franco nor McNabb teaches or suggests dragging and dropping of a graphical

representation of an application on a graphical representation of a compartment to cause

automatic installation of the application in the compartment, as discussed above with claim 1.

Examiner's Response

6)   The Examiner has already addressed appellant's arguments regarding installing an

application in a compartment of a trusted operating system in the Examiner's Response (2)

above.

In response to appellant's arguments, the recitation "a graphical installation tool for so

installing an application" has not been given patentable weight because the recitation occurs in

the preamble. A preamble is generally not accorded any patentable weight where it merely

recites the purpose of a process or the intended use of a structure, and where the body of the

claim does not depend on the preamble for completeness but, instead, the process steps or

structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15

(CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Furthermore, the Examiner has already addressed appellant's arguments regarding claim

1 in the Examiner's Responses (1) and (2) above. See the Examiner's Responses (1) and (2)

above.

Appellant has argued

7)   Dependent claim 18 depends from independent claim 17, and thus includes all of the

elements of claim 17 in addition to its own supplied elements. It is respectfully submitted that

dependent claim 18 is allowable at least because of its dependence from claim 17 for the reasons

discussed above. Moreover, dependent claim 18 recites additional elements not taught or.

suggested by the applied art. Neither Franco nor McNabb teaches or suggests means for

automatically installing supporting resources associated with a selected application within a

selected compartment.

Examiner's Response

7)   The Examiner has already addressed appellant's arguments regarding claim 17 in the

Examiner's Response (6) above. See the Examiner's Response (6) above.

        Furthermore, regarding elements of claim 18, appellant's arguments fail to comply with

37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable

invention without specifically pointing out how the language of the claims patentably

distinguishes them from the references.

Appellant has argued

8)   The combination of Franco and McNabb fails to teach or suggest elements of claim 22.

For instance, neither Franco nor McNabb is concerned with installing an application in a

compartment of a trusted operating system, and neither reference provides any teaching or

suggestion of a method for such installation. Further, the combination fails to teach or suggest

enabling association of a selected application with a compartment of a trusted operating system.

Further still, the combination fails to teach or suggest automatically installing the selected

application in the selected compartment in response to the association of the selected application

with the selected compartment. Again, as discussed in greater detail above with claim 1, neither

Franco nor McNabb teaches or suggests automatically installing an application in a selected

compartment of a trusted operating system.

Examiner's Response

8)   The Examiner has already addressed appellant's arguments regarding installing an

application in a compartment of a trusted operating system in the Examiner's Response (2)

above.

Furthermore, Franco teaches "enabling association of said selected application with a

recipient computer (e.g. see col. 19:64 to col. 20:14, droplet–enabled)"; and "automatically

installing said selected application in *said recipient computer* in response to said association of

said selected application with said recipient computer (e.g. see col. 19:64 to col. 20:14, which

states "… attachment is copied onto …")". That is, Franco teaches a recipient computer. Franco

does not explicitly teach *a compartment of said trusted operating system*. McNabb teaches a

compartment of said trusted operating system (e.g. see "partition" in column 17, lines 49-57).

In addition, the Examiner has already addressed appellant's arguments regarding claim 1

in the Examiner's Responses (1) and (2) above. See the Examiner's Responses (1) and (2)

above.

Appellant has argued

9)   Dependent claim 23 depends from independent claim 22, and thus includes all of the

elements of claim 22 in addition to its own supplied elements. It is respectfully submitted that

dependent claim 23 is allowable at least because of its dependence from claim 22 for the reasons

discussed above. Moreover, dependent claim 23 recites additional elements not taught or

suggested by the applied art. Neither Franco nor McNabb teaches or suggests a graphical

representation of a compartment, nor do they teach or suggest enabling dropping of a graphical

representation of an application on a graphical representation of the compartment.

Examiner's Response

9)   The Examiner has already addressed appellant's arguments regarding claim 22 in the

Examiner's Response (8) above. See the Examiner's Response (8) above.

Furthermore, the Examiner has already addressed appellant's arguments regarding a

graphical representation of a compartment; enabling dropping of a graphical representation of an

application on a graphical representation of the compartment in the Examiner's Response (2)

above.

Appellant has argued

10)   Dependent claims 4-5 depend directly or indirectly from independent claim 1, and thus

include all of the elements of claim 1 in addition, to their own supplied elements. Appellee does

not rely upon Bearden as teaching or suggesting the above-identified deficiencies of claim 1, nor

does it do so. Thus, dependent claims 4-5 are allowable at least because of their dependence from

claim 1 for the reasons discussed above.

Examiner's Response

10)   In response to appellant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Furthermore, the Examiner has already addressed appellant's arguments regarding claim 1 in the Examiner's Responses (1) and (2) above. See the Examiner's Responses (1) and (2) above.

Appellant has argued

11)   Dependent claim 20 depends from independent claim 17, and thus includes all of the elements of claim 17 in addition to its own supplied elements. Appellee does not rely upon Bearden as teaching or suggesting the above-identified deficiencies of claim 17, nor does it do so. Thus, dependent claim 20 is allowable at least because of its dependence from claim 17 for the reasons discussed above.

Examiner's Response

11)   In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Furthermore, the Examiner has already addressed appellant's arguments regarding claim 17 in the Examiner's Response (6) above. See the Examiner's Response (6) above.

Appellant has argued

12)   Dependent claim 25 depends from independent claim 22, and thus includes all of the elements of claim 22 in addition to its own supplied elements. Appellee does not rely upon Bearden as teaching or suggesting the above-identified deficiencies of claim 22, nor does it do so. Thus, dependent claim 25 is allowable at least because of its dependence from claim 22 for the reasons discussed above.

Examiner's Response

12)   In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Furthermore, the Examiner has already addressed appellant's arguments regarding claim 22 in the Examiner's Response (8) above. See the Examiner's Response (8) above.

Appellant has argued

13)   Dependent claim 8 depends from independent claim 1, and thus includes all of the elements of claim 1 in addition to its own supplied elements. Appellee does not rely upon Anderson as teaching or suggesting the above-identified deficiencies of claim 1, nor does it do so. Thus, dependent claim 8 is allowable at least because of its dependence from claim 1 for the reasons discussed above.

Examiner's Response

13)   In response to appellant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Furthermore, the Examiner has already addressed appellant's arguments regarding claim

1 in the Examiner's Responses (1) and (2) above. See the Examiner's Responses (1) and (2)
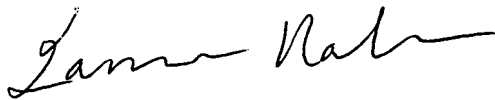
above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.
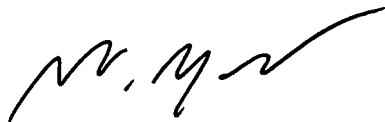
Respectfully submitted,

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July 2, 2007

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